

HOUSE BILL NO. 381

INTRODUCED BY CALLAHAN, ROBERTS, CLARK, COHENOUR, GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A WORKERS' COMPENSATION CLAIMANT AND THE INSURER OR AN AUTHORIZED THIRD-PARTY EXAMINER ATTEND ANY SCHEDULED MEDIATION CONFERENCE IN PERSON OR PARTICIPATE BY TELEPHONE CONFERENCE CALL; ~~PERMITTING THE MEDIATOR TO REQUEST THAT ANY OTHER PERSON WHO MIGHT BE NECESSARY TO THE RESOLUTION OF THE DISPUTE ATTEND A MEDIATION CONFERENCE IN PERSON OR PARTICIPATE BY TELEPHONE CONFERENCE CALL;~~ AND AMENDING SECTIONS 39-71-2410 AND 39-71-2411, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-2410, MCA, is amended to read:

"39-71-2410. Limitations on mediation proceedings. (1) Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(4)(c) or 39-71-2411~~(7)(c)~~(8)(c), mediation proceedings ~~are~~ must be:

(a) held in private;

(b) informal and held without a verbatim record; and

(c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all persons but the parties.

(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) ~~Neither the~~ The mediator's report ~~nor~~ and any of the information or recommendations contained in ~~it~~ the report are ~~not~~ admissible as evidence in any action subsequently brought in any court of law.

(5) ~~Notwithstanding subsections (1) through (4),~~ Subsections (1) through (4) do not prohibit a mediator ~~may issue from issuing~~ a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411."

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2 **Section 2.** Section 39-71-2411, MCA, is amended to read:

3 **"39-71-2411. Mediation procedure.** (1) Except as otherwise provided, a claimant or an insurer having
4 a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the
5 dispute.

6 (2) A party may take part in mediation proceedings with or without representation.

7 (3) The mediator shall review the department file for the case and may receive any additional
8 documentation or argument either party submits.

9 (4) ~~(a) The claimant and an employee of the insurer OR AN AUTHORIZED THIRD-PARTY EXAMINER with~~
10 ~~appropriate settlement authority shall attend any scheduled mediation conference in person or shall participate~~
11 ~~by telephone conference call.~~

12 ~~(b) The mediator may request that any other person who may be necessary to resolution of the dispute~~
13 ~~attend a scheduled mediation conference in person or participate by telephone conference call.~~

14 ~~(4)(5)~~ (5) The mediator shall request that each party offer an argument summarizing the party's position.
15 A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

16 ~~(5)(6)~~ (6) After the parties have presented all their information and ~~argument~~ arguments to the mediator,
17 the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

18 ~~(6)(7)~~ (7) A party shall notify the mediator within 25 days of the mailing of the mediator's report as to
19 whether the party accepts the mediator's recommendation. If either party does not accept the mediator's
20 recommendation, the party may petition the workers' compensation court for resolution of the dispute.

21 ~~(7)(8)~~ (8) (a) If a mediator determines that either party failed to cooperate in the mediation process, the
22 mediator shall prepare a written report setting forth the determination and the grounds for the determination. The
23 report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the
24 determination as set forth in subsection ~~(7)(c)~~ ~~(8)(c)~~, the parties shall repeat the mediation process, but only one
25 time.

26 (b) A mediator may determine that a party has failed to cooperate in the mediation process only if the
27 party failed to:

28 (i) supply information or offer a summary of the party's position as reasonably requested by the
29 mediator;

30 (ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute."

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